(16,624)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 132.

THE TOWN OF REAL DE DOLORES DEL ORO, HIPOLITO MONTOYA, ET AL., APPELLANTS,

vs.

THE UNITED STATES ET AL.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 21, 1898.

1 UNITED STATES OF AMERICA, } ss:
Territory of New Mexico, }

Be it remembered that heretofore, to wit, on the 18th day of February, A. D. 1893, there was filed in the office of the clerk of the court of private land claims, at the city of Santa Fé, in the Territory of New Mexico, a petition; which said petition is in the words and figures following, to wit:

UNITED STATES OF AMERICA:

In the Court of Private Land Claims, Sitting at the City of Santa Fé, in the Territory of New Mexico.

THE TOWN OF REAL DE DOLORES DEL ORO and GUADALUPE Montoya, Petitioners,
vs.
THE UNITED STATES OF AMERICA and THE NEW MEXICO Mining Company, Defendants.

To the honorable chief justice and associate justices of said court:

The Town of Real de Dolores del Oro, an unincorporated town organized under and in pursuance of the Republic of Mexico, as hereinafter set forth, and situated in the county of Santa Fé and Territory of New Mexico, and Guadalupe Montoya, of said county of Santa Fé, bring this their petition against The United States of America and The New Mexico Mining Company as defendants, and thereupon state and show to the court the following:

1.

In the year 1830 the then governor, under the government of the Republic of Mexico, on New Mexico founded the town or vil-
2 lage called the Real de Dolores del Oro under and in pursuance of the laws of Mexico then in force in said Territory.

2.

The said town or village continued in existence from the time of its foundation, with the officers, power, and jurisdiction pertaining to a town or village under the Mexican government, down to the cession of said Territory to the United States, and prior to said date there were not less than forty residents of said town, including not less than twenty householders and heads of families, and a church had been erected and maintained in said town and all of the requirements of the laws of the Republic of Mexico in relation thereto had been complied with, and the said town or village had been and was fully recognized by public authority, and the said town or village was in existence as such at the date of said cession.

3.

By virtue of its creation and existence said town, in addition to what was allotted to its inhabitants in severalty, became and was

entitled under the laws of Mexico to lands for the common use of the town and for late settlers who might lawfully take up their residence thereon, and in default of an actual grant of a larger quantity was entitled by law to a tract, including the lands held in severalty, of four square leagues of land in a square form, with the church or the center of the town as the center of the tract, and extending therefrom one league to each of the cardinal points of the compass.

4.

There is no known direct evidence or record of the grant to said town, although there is reason to believe that a grant was actually made.

3

5.

The said town is not incorporated, and your petitioner, Guadalupe Montoya, brings this petition on behalf of said town and of himself and of all other owners of land within the boundaries of said tract, there being no municipal corporation within the limits of the said tract, and the said Guadalupe Montoya is the owner, by descent and purchase, of a part of the said tract of land embraced in the grant thereof to the said town, and is the successor in part to the rights and title of said original grantee.

6.

Shortly after the acquisition of New Mexico by the United States the Real de Dolores del Oro ceased to exercise the powers and functions of a municipal government and ceased to elect the municipal officers, who previously had administered its affairs.

7.

Said land is all situated in the county of Santa Fé, New Mexico, and includes four square leagues, having the center of the said town, being the church situated therein, as the center thereof, and a map of the same is herewith filed in duplicate.

8.

Said tract of land is held and claimed by a large number of persons, including your petitioner, under the said grant, and it is not known that any of the possessors or claimants thereof are adverse to your petitioners; but your petitioners are informed that the defendant The New Mexico Mining Company claims some title or interest therein under and by virtue of an alleged private land grant, which your petitioners allege to be subordinate to the title of your petitioners.

9.

4 No claim for the said tract now petitioned for has ever been submitted to any authorities constituted by law for the determination of land titles in this Territory, so far as known to your petitioners, and no survey of the said tract of land has been made

No. 132.
Town of Real de Dolores del Oro
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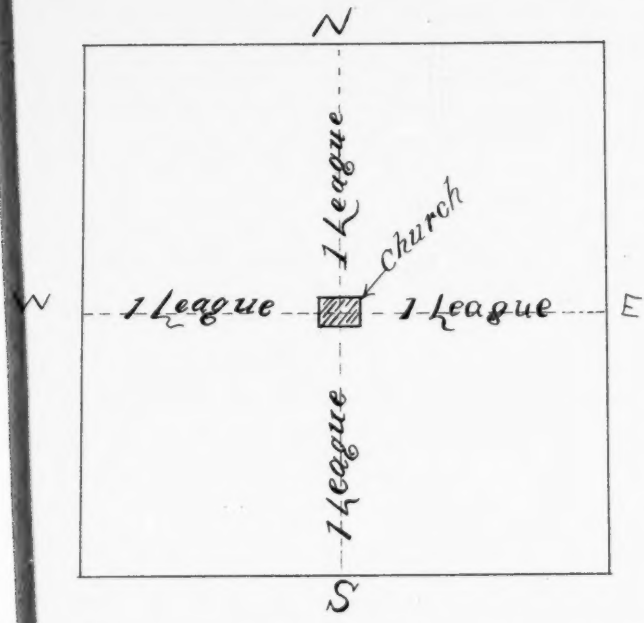

Map of Real de Dolores del Oro
Santa Fe County N M

2 inches = 1 League

10.

No original documents constituting or creating the grant hereby claimed are known to exist, and therefore no such documents can be filed herewith.

11.

Your petitioners therefore claim the said tract of land containing four square leagues, as shown on the map filed herewith, having for its center the center of the old Real de Dolores del Oro, being the church situated therein, and pray that the validity of the said grant may be inquired into and decided by this court, and pray that said tract may be confirmed to the said town or to your petitioner, Guadalupe Montoya, in his own right and in trust for the benefit of the other owners of lands within its limits.

THE TOWN OF DOLORES DEL ORO,
GUADALUPE MONTOYA,
By WARREN, FERGUSSON & BRUNER,
Attorneys for Petitioners.

5 And be it further remembered that thereafter, to wit, on the day and year last aforesaid, there was filed in the office of the clerk a plat; which said plat is as follows, to wit:

(Here follows diagram marked p. 6.)

7 And be it further remembered that, to wit, on the 23d day of March, A. D. 1893, a summons was issued by the clerk of said court; which said summons, with all endorsements thereon, is as follows, to wit:

8 Form No. 167.
U. S. Court of Private Land Claims.

Summons.

UNITED STATES OF AMERICA, } ss:
District of New Mexico, }

In the U. S. Court of Private Land Claims.

GUADALUPE MONTOYA, Plaintiff,
versus
THE UNITED STATES OF AMERICA and The New Mexico Mining Co., Defendant-. } Petition Filed in the Clerk's Office this 18th Day of February, A. D. 1893.

The President of the United States of America to Matt. G. Reynolds, Esq., attorney for the United States before the court of private land claims, Greeting:

You, and each of you, are hereby notified that an action has been brought in said court by Guadalupe Montoya and The Town of Real de Dolores, plaintiff-, against you, as defendant, under the provisions of the act of the Congress of the United States, entitled "An

act to establish a court of private land claims and to provide for the settlement of private land claims in certain States and Territories," approved March 3, 1891, and that a copy of the petition of said plaintiff- is herewith attached and served upon you, and that you are required to appear and plead, demur, or answer to the petition filed in said action, in said court, within thirty days from the date of service of this summons upon you, and if you fail so to do the said plaintiff- will take default according to the provisions of the aforesaid act.

Witness the Honorable Joseph R. Reed, chief justice of the court of private land claims, and the seal of the said court, at the city of Santa Fé, in said district, this 23d day of March, A. D. [SEAL.] 1893, and of the Independence of the United States the 116th year.

JAMES H. REEDER, *Clerk*,
By IRENEO L. CHAVES,
Deputy Clerk.

9 *Proof of Service.*

UNITED STATES OF AMERICA, } ss:
District of New Mexico, }

SANTA FÉ, *April 21st, A. D.* 1893.

I hereby certify that I received the within writ on the 23 day of March, A. D. 1893, and that I have personally served the same upon the said defendant, U. S., by delivering to—

Served on me this the 29 day of March, 1893.

MATT G. REYNOLDS,
U. S. Attorney.

and each of them personally a true copy of the within writ at the time and place as follows: As to —— ——, at ——, county of ——, on the — day of ——, A. D. 189-; as to —— ——, —.

This writ, therefore, returned by me, as the law directs, this 21st day of April, A. D. 1893.

TRINIDAD ROMERO, *Marshal*,
By SERAPIO ROMERO,
Deputy Marshal.

[Endorsed:] Real de Dolores grant. Gen. No., 111. F. No., 3. U. S. court of private land claims, district of New Mexico. Guadalupe Montoya and The Town of Real de Dolores, plaintiff-, *versus* The United States of America, defendant. Summons. Filed this 21st day of April, A. D. 1893. James H. Reeder, clerk, by Ireneo L. Chaves, deputy clerk. Warren, Fergusson and Brunner, of Albuquerque, attorney- for plaintiff.

10 And be it further remembered that thereafter, to wit, on the 16th day of April, 1895, an answer was filed in the office of the clerk; which said answer is in the words and figures following, to wit:

11 UNITED STATES OF AMERICA, *ss:*

In the Court of Private Land Claims, Santa Fé District, May Term, 1895.

GUADALUPE MONTOYA, Plaintiffs,
versus
UNITED STATES, Defendant. } No. 111.

Town of Real del D. grant.

Answer.

Comes now the United States, by its attorney, Matt. G. Reynolds, and for answer to the petition filed in the above-entitled cause says:

That for aught it knows to the contrary the matters and things in said petition alleged may be true, but, having no knowledge or information sufficient to enable it to form a belief as to whether they are true, and not confessing any of them to be true in the manner and form as the same are in said petition set forth and alleged, it asks that plaintiff be put to his proof of all the allegations therein contained, as provided he shall be by the act of Congress approved March 3, 1891, under which this court assumes jurisdiction of this controversy, and that he shall be put to his proof as to his pretended interest in said alleged grant.

Now, having fully answered, it prays the court that a decree may be entered rejecting the claim for said alleged grant and dismissing the petition, and for such other orders as to the court may seem meet and proper and which it may be authorized to make in the premises.

Respectfully submitted.

MATT G. REYNOLDS,
U. S. Attorney.

12 And be it further remembered that thereafter, to wit, on the 4th day of June, 1895, the same being a day of the regular May term, 1895, holden at the city of Santa Fé, Territory of New Mexico, the following, among other, proceedings were had, to wit:

GUADALUPE MONTOYA ET AL.
vs.
THE UNITED STATES ET AL., Defendants.

Comes now H. L. Warren, Esq., attorney for plaintiffs in the above-entitled cause, and moves the court to continue the said cause until the next term of the court. It is therefore ordered by the court that this cause be, and the same hereby is, continued until the next term of the court.

13 And be it further remembered that thereafter, to wit, on the 5th day of September, 1896, a motion to make parties

defendant was filed in the office of the clerk; which said motion is in the words and figures following, to wit:

14 In the Court of Private Land Claims, Santa Fé District, 1896.

GUADALUPE MONTOYA, Plaintiff,
vs.
UNITED STATES, Defendant. } No. 111.

Now comes the defendant, The United States, in the above-entitled cause, and moves the court for an order requiring the plaintiff in said cause to make parties defendant adverse possessors and claimants of real estate included within the grant claimed by said plaintiff in the above entitled cause, among said adverse possessors and claimants being the following:

The claimants of San Antonio de las Huertas, No. 209.
" " " " " " No. 90.

Defendant further prays an order of court requiring said plaintiffs to serve each of said adverse claimants and possessors with citation and a copy of their petition acquired by law.

WM. H. POPE,
Ass't U. S. Attorney.

15 And be it further remembered that thereafter, to wit, on the 5th day of September, 1896, the same being a day of the regular August term, 1896, holden at the city of Santa Fé, Territory of New Mexico, the following, among other, proceedings were had, to wit:

GUADALUPE MONTOYA ET AL.
vs.
UNITED STATES ET AL. } No. 111.

In the above-entitled cause it is ordered by the court that the plaintiffs make the following persons parties to the action and serve them with process, it appearing that they were in possession and claiming portions of the land claimed by plaintiff when said action was instituted, viz., the claimants of San Antonio de las Huertas, No. 269 and 90.

16 Be it further remembered that thereafter, to wit, on the second day of April, 1897, there was filed in the office of the clerk of said court, at Santa Fé, New Mexico, an amended petition; which amended petition is in the words and figures following, to wit:

17 UNITED STATES OF AMERICA:

In the Court of Private Land Claims, Sitting at the City of Santa Fé, in the Territory of New Mexico.

THE TOWN OF REAL DE DOLORES DEL ORO and GUADALUPE Montoya, Petitioners,
vs.
THE UNITED STATES OF AMERICA and THE NEW MEXICO MINING Company, Defendants.

To the honorable chief justice and associate justices of said court:

The Town of Real de Dolores del Oro, an unincorporated town organized under and in pursuance of the Republic of Mexico, as hereinafter set forth, and situated in the county of Santa Fé and Territory of New Mexico, and Guadalupe Montoya, of said county of Santa Fé, bring this their petition against The United States of America and The New Mexico Mining Company, Joseph H. Gurule, Francisco Trujillo, Mariano S. Otero, Antonio Jose Callegos, Francisco Francear, Jose Martin Skinner, Jesus Gonzales, Narciso Gonzales, Estaquio Barreras, Felipe Padilla, Asencion Nieto, Francisco Gurule, Jose Aragon, J. Catarino Garcia, Antonio Jose Gallegos, Nicolas Gutierres, Roman Chaves, Reves Candelario, Luis Jose Barreras, J. Vidal Mora, Eusebio Gurule, Roumaldo Nieto, Nicanor Armijo, Jeronimo Gurule, Eutemio Gonzales, Pablo Barreras, Nestor Gonzales, Amado Mora, Emiterio Gutierrez, Dolores Gurule, Jose Candelario, Manuel Candelario, Benito Chaves, Jose A. Garcia y Gurule, Juan Chaves, Antonio Garcia, Pedro Anto. Serna,
18 Juan Antonio Chaves, Jose Emiterio Montano, Simon Gonzales, Marcelion Archibeque, Nestor Nieto, Florencio Martinez, Bacilio Garcia, Merillita Gonzales, Henry Calwell, Jose Padilla, Nabor Gurule, Epifanio Calwell, Luis Chaves, John Calwell, Juan Nieto, Agapito Garcia, Jose M. Serna, Tirsio Lucero, J. M. Skinner, Juan Barros, R. M. Carley, Jose Gallegos, Barbara Gurule, Cirilio Montano, Manuel A. Trujillo, Juan Padilla, Pablito Chaves, Cornelio Montoya, Thomas B. Catron, The Cerrillos Coal Railroad Company, and The Santa Fe Copper Company, as defendants, and thereupon state and show to the court the following:

1.

In the year 1830 the then governor, under the government of the Republic of Mexico, on New Mexico, founded the town or village called the Real de Dolores del Oro under and in pursuance of the laws of Mexico then in force in said Territory.

2.

The said town or village continued in existence from the time of its foundation, with the officers, power, and jurisdiction pertaining to a town or village under the Mexican government, down to the cession of said territory to the United States, and prior to said date there were not less than forty residents of said town, including not

less than twenty householders and heads of families, and a church had been erected and maintained in said town and all of the requirements of the laws of the Republic of Mexico in relation thereto had been compiled with, and the said town or village had been and was fully recognized by public authority and the said town or village was in existence as such at the date of said cession.

3.

By virtue of its creation and existence said town, in addition to what was allotted to its inhabitants in severality, became and
19 was entitled under the laws of Mexico to lands for the commo use of the town and for late settlers who might lawfully take up their residence thereon, and in default of an actual grant of a larger quantity was entitled by law to a tract, including the lands held in severality, of four square leagues of land in a square form, with the church or the center of the town as the center of the tract and extending therefrom one league to each of the cardinal points of the compass.

4.

There is no known direct evidence or record of the grant to said town, although there is reason to believe that a grant was actually made.

5.

The said town is not incorporated, and petitioner Guadalupe Montoya brings this petition on behalf of said town and of himself and of all other owners of land within the boundaries of said tract, there being no municipal corporation within the limits of the said tract, and the said Guadalupe Montoya is the owner by descent and purchase of a part of the said tract of land embraced in the grant thereof to the said town and is the successor in part to the rights and title of said original grantee.

6.

Shortly after the acquisition of New Mexico by the United States the Real de Dolores del Oro ceased to exercise the powers and functions of a municipal government and ceased to elect the municipal officers who previously had administered its affairs.

7.

Said land is all situated in the county of Santa Fé, New Mexico, and includes four square leagues, having the center of the said town, being the church situated therein, as the center thereof, and a map of the same is herewith filed in duplicate.

20 8.

Said tract of land is held and claimed by a large number of persons, including your petitioner, under the said grant, and it is not known that any of the possessors or claimants thereof are adverse to your petitioners, but your petitioners are informed that the de-

fendant-, The New Mexico Mining Company, Joseph H. Gurule, Francisco Trujillo, Mariano S. Otero, Antonio Jose Gallegos, Francisco Francear, Jose Martin Skinner, Jesus Gonzales, Narciso Gonzales, Eustaquio Barreras, Felipe Padilla, Asencion Nieto, Francisco Gurule, Jose Aragon, J. Caterino Garcia, Antonio Jose Gallegos, Nicolas Gutierres, Roman Chaves, Reyes Candelario, Luis Jose Barreras, J. Vidal Mora, Eusebio Gurule, Roumaldo Nieto, Nicanor Armijo, Jeronimo Gurule, Eutemio Gonzales, Pablo Barreras, Nestor Gonzales, Amado Mora, Emiterio Gutierrez, Dolores Gurule, Jose Candelario, Manuel Candelario, Benito Chaves, Jose A. Garcia y Gurule, Juan Chaves, Antonio Garcia, Pedro Anto. Serna, Juan Antonio Chaves, Jose Emiterio Montano, Simon Gonzales, Marcelino Archibeque, Nestor Nieto, Florencio Martinez, Bacilio Garcia, Merillita Gonzales, Henry Calwell, Nabor Gurule, Epifanio Calwell, Luis Chaves, John Calwell, Jose Padilla, Juan Nieto, Agapito Garcia, Jose M. Serna, Tirsio Lucero, J. M. Skinner, Juan Barros, R. M. Carley, Jose Gallegos, Barbara Gurule, Cirilio Montano, Manuel A. Trujillo, Juan Padilla, Pablito Chaves, Cornelio Montoya, Thomas B. Catron, The Cerillos Coal Railroad Company, and The Santa Fe Copper Company claims some title or interest therein under and by virtue of an alleged private land grant, which your petitioners allege to be subordinate to the title of your petitioners.

9.

No claim for the said tract now petitioned for has ever been submitted to any authorities constituted by law for the determination of land titles in this Territory so far as known to your petitioners, and no survey of the said tract of land has been made.

10.

No original documents constituting or creating the grant hereby claimed are known to exist, and therefore no such documents can be filed herewith.

11.

Your petitioners therefore claim the said tract of land, containing four square leagues, as shown on the map filed herewith, having for its center the center of the old Real de Dolores del Oro, being the church situated therein, and pray that the validity of the said grant may be inquired into and decided by this court, and pray that said tract may be confirmed to the said town or your petitioner Gjadalupe Montoya in his own right and in trust for the benefit of the other owners of lands within its limits.

12.

May it please your honors to grant unto your petitioners the writ of subpœna issued out of and under the seal of your honors' court, commanding the said The United States of America, The New Mexico Mining Company, Joseph H. Gurule, Francisco Trujillo, Mariano S. Otero, Antonio Jose Gallegos, Francisco Francear, Jose

Martin Skinner, Jesus Gonzales, Narciso Gonzales, Eustaquio Barreras, Felipe Padilla, Acencion Nieto, Francisco Gurule, Jose Aragon, J. Caterino Garcia, Antonio Jose Gallegos, Nicolas Gutierres, Roman Chaves, Reyes Candelario, Luis Jose Barreras, J. Vidal Mora, Eusebio Gurule, Roumaldo Nieto, Nicanor Armijo, Jeronimo Gurule, Eutemio Gonzales, Pablo Barreras, Nestor Gonzales, Amado Mora, Emiterio Gutierrez, Dolores Gurule, Jose Candelario, Manuel Candelario, Benito Chaves, Jose A. Garcia y Gurule, Juan Chaves, Antonio Garcia, Pedro Anto. Serna, Juan Antonio Chaves, Jose
22 Emiterio Montano, Simon Gonzales, Marcelino Archibeque, Nestor Nieto, Florencio Martinez, Bacilio Garcia, Merillita Gonzales, Henry Calwell, Nabor Gurule, Epifanio Calwell, Luis Chaves, John Calwell, Jose Padilla, Juan Nieto, Agapito Garcia, Jose M. Serna, Tirsio Lucero, J. M. Skinner, Juan Barros, R. M. Carley, Jose Gallegos, Barbara Gurule, Cirilio Montano, Manuel A. Trujillo, Juan Padilla, Pablito Chaves, Cornelio Montoya, Thomas B. Catron, The Cerillos Coal Railroad Company, and The Santa Fe Copper Company to be and appear before your honors' court on a day and under a penalty therein named to answer all and singular the premises, and that your honors will grant your petitioners such other and further relief as the nature of their case may require and as to your honors may seem meet and proper; and your petitioners will ever pray.

THE TOWN OF DOLORES DE ORO,
GUADALUPE MONTOYA,
By H. L. WARREN, *Attorney for Petitioners.*

23 And be it further remembered that thereafter, to wit, on the 17th day of May, 1897, there was filed in the office of the clerk an amended answer to petition and amended petition; which said amended answer is in the words and figures following, to wit:

24 In the Court of Private Land Claims, Santa Fé District, 1897.

GUADALUPE MONTOYA ET AL.,
Plaintiffs,
vs.
UNITED STATES ET AL.
} No. 111. Town of Real de Dolores.

Now comes the defendant The United States, and for its amended answer to the petition and amended petition in the above-entitled cause says:

First. That it is not true, as alleged in said petition, that in the year 1830 the then governor under the government of the Republic of Mexico founded the town or village called the Real de Dolores del Oro in pursuance of the laws of Mexico, then in force in said Territory.

Second. That it is not true, as alleged in said petition, that said town or village continued in existence from the time of its foundation, with the officers, powers, and jurisdiction pertaining to a town or village under the Mexican government, down to the cession of

said territory to the United States; and that it is not true, as alleged, that said town or village had been and was fully recognized by public authority, or that the same was in existence as such at the date of said cession.

Third. That it is not true, as alleged in said petition, that said town, even if created and existing as alleged, became and was entitled, under the laws of Mexico, to lands for the common use of the town and for late settlers who might lawfully take up their residence thereon; nor is it true that said town was entitled by law to a tract of four square leagues of land in a square form, with the church or the center of the town as the center of the tract, and extending therefrom one league to each of the cardinal points of the compass.

Fourth. That as to all other matters alleged in said petition defendant has no knowledge or information sufficient to enable it to form a belief as to whether they are true, and accordingly denies the truth of the same, and prays that plaintiffs be put to strict proof thereof.

Fifth. Defendant, further answering, says that, even if said grant as alleged — made as set forth in said petition, the land claimed
25 in said petition under and by virtue of said alleged grant was and is entirely within the limits of a tract of land known as the Ortiz Mine grant, which, by virtue of the laws, usages and customs, and mining ordinances of Mexico, was on the 18th day of December, 1833, made to Jose Francisco Ortiz and Ignacio Cano. The claim for which said land so granted, consisting of sixteen square leagues of land, being two leagues in each of the four cardinal directions from the Santa Rosalia mine, was presented by the successors in interest of said grantees to the surveyor general of New Mexico, under the provisions of the eighth section of the act of Congress of June 27, 1854, for his approval, and that such proceedings were had before said surveyor general that afterwards, to wit, November 24, 1860, said surveyor general of New Mexico approved the said claim and transmitted the same to Congress and recommended its confirmation, and that afterwards, to wit, under and by virtue of the act of Congress approved March 1st, A. D. 1861, entitled "An act to confirm a certain private land claim in the Territory of New Mexico," said Congress of the United States confirmed said claim as recommended for confirmation; which said act is in words and figures as follows, to wit:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the private land claim in the Territory of New Mexico, as recommended for confirmation by the surveyor general of that Territory, and in his report to the Commissioner of the General Land Office, of November twenty-fourth, eighteen hundred and sixty, designated as number forty-three, be, and the same is hereby, confirmed: Provided, that the foregoing confirmation shall only be construed as quitclaim or relinquishment, on the part of the United States, and shall not affect the adverse rights of any other person or persons whomsoever."

That under and by virtue of said act of confirmation a survey of said grant so recommended for *for* confirmation and so confirmed

was duly made by the public authorities lawfully constituted therefor, and on the 20th day of May, A. D. 1876, letters patent for said confirmed grant duly issued to the New Mexico Mining Company as the owners of said Ortiz Mine grant.

Defendant shows that by virtue of said act of confirmation and said letters patent the said New Mexico Mining Company acquired
the interest of the United States in and to said sixteen square
26 leagues of land, including the grant herein claimed as aforesaid, and that by said act of Congress the right to said land was vested in said New Mexico Mining Company, and said action of Congress was and is conclusive and binding upon this court, for the reason that by the act establishing this court it is specifically provided that no claim shall be allowed for any land the right of which has been hitherto lawfully acted upon it and decided by Congress or under its authority.

Defendant, further answering, says that said confirmation, as aforesaid, passed any title acquired by the United States under the treaty of Guadalupe Hidalgo, and that the United States has no interest in said property, and none which this court could pass to plaintiff herein, and that said claim is not one which, under the treaty of Guadalupe Hidalgo, the laws of nations, and the acts of Congress, is entitled to be confirmed by this court.

Sixth. Defendant, further answering, says that even if any such grant was made, as set forth in said petition, the land thereby attempted to be confirmed was and is, to the extent of about two thousand acres, within the limits of a tract of land known as the Mesita de Juana Lopez grant, which was granted by the Spanish government on the 18th day of January, A. D. 1782, to Domingo Romero, Miguel Ortiz, and Manuel Ortiz, a claim for which said tract of land was presented by the heirs of said grantees to the surveyor general of the Territory of New Mexico, under the provisions of the 8th section of the act of Congress of June 22nd, 1854, on the 30th day of September, 1872, for his approval, and that such proceedings were had before said surveyor general that afterwards, to wit, on the 29th day of November, 1872, said surveyor general of New Mexico approved the said claim and transmitted the same to Congress, recommending its confirmation, and that afterwards, to wit, on the 28th day of January, A. D. 1879, said Congress of the United States confirmed the said claim as recommended for confirmation; which said act is in words and figures as follows:

"That the private land claim in the Territory of New Mexico known as the Mesita de Juana Lopez grant, made by the Spanish
government January eighteenth, seventeen hundred and
27 eighty-two, examined, approved, and recommended for confirmation by the surveyor general of New Mexico, November twenty-ninth, eighteen hundred and seventy-two, designated as private land claim number sixty-four, and duly surveyed by the United States, the field-notes of the survey and plat being approved by the surveyor general of New Mexico on February twenty-eighth, eighteen hundred and seventy-seven, be, and the same is hereby confirmed: Provided, that the foregoing confirmation shall only

be construed as a quitclaim or relinquishment of all title or claim on the part of the United States in and to said private land claim, and shall not affect the adverse rights of any person or persons to the same; nor shall the United States be liable to make compensation for any part of said land to which there are or may be any adverse rights or claim."

That by said act of confirmation the survey of said grant theretofore made under direction of the surveyor general of New Mexico, approved by him on February 28, 1877, was approved, and that subsequently, said matter having come before the Secretary of the Interior of the United States for his action under the provisions of the laws of the country, he, being thereby authorized and empowered with exclusive jurisdiction to pass upon such questions, in an opinion dated May 13th, 1893, held and decided that said act of confirmation before mentioned was a confirmation of said claim according and by the survey there-fore approved by the surveyor general of the Territory of New Mexico, and that said confirmation was coextensive with and limited by the boundaries designated in said survey, and that said act of confirmation of said claim and said survey and by force of its own terms passed the title according to said boundaries to the said claimants.

Defendant alleges that the right to said land has to the extent of said conflict with said Mesita de Juana Lopez grant been by the Congress of the United States and by said act of confirmation adjudged to be in the heirs of Domingo Romero and others, and that by said act of confirmation all title acquired by the United States under the treaty of Guadalupe Hidalgo in and to said land situate as aforesaid within the Mesita de Juana Lopez grant passed to the successors in interest of the grantees of said Mesita de Juana Lopez grant, and that as to said land within said Mesita de Juana Lopez grant as aforesaid this court has no jurisdiction to enter a decree of confirmation for the same.

Therefore defendant prays that said claim for said grant herein sued for be rejected and the said petition dismissed.

MATT. G. REYNOLDS,
U. S. Attorney.

28 And be it further remembered that thereafter, to wit, on the 17th day of May, 1897, there *was* filed in the office of the clerk exceptions to said amended answer; which said exceptions are in the words and figures following, to wit:

29 *Exceptions to Answers.*

In the Court of Private Land Claims, Santa Fé District.

POLITO MONTOYA, JOSE MONTOYA, TIRCIO MONTOYA, and Abran Montoya, Heirs-at-law of Guadalupe Montoya, Petitioners,
vs.
THE UNITED STATES ET AL.
} No. 111.

The petitioners except to so much and such parts of the amended answer herein of the defendant The United States as is set forth in the fifth paragraph or subdivision of said amended answer, to the substance and effect that the land described in petitioners' amended petition is within the limits of a tract of land known as the Ortiz Mine grant, consisting of sixteen square leagues of land, granted on December 13th, 1833, by virtue of the laws, usages, and customs of Mexico to Jose Francisco Ortiz and Ignacio Cano, being two leagues in each of the four cardinal directions from the Santa Rosalia mine, and which grant was approved by the surveyor general of New Mexico and confirmed by act of Congress approved March 1, 1861, and said tract of land surveyed by the public authorities lawfully constituted therefor, and letters patent therefor issued to the New Mexico Mining Company, dated May 20, 1876, and that by virtue of said confirmation and patent the right to said land was vested, as against these petitioners, in the New Mexico Mining Company, and that said action of Congress is conclusive and binding upon this court for the reason set forth in said amended answer, and for grounds of exception the petitioners show unto the court that said amended answer does not allege that the right of the petitioners to said land described in their amended petition has ever been lawfully acted upon or decided by Congress or under its authority; and said amended answer in said matters so set forth
30 in said paragraph fifth is insufficient in law to constitute any defense to said petition.

WARREN, FERGUSSON & GILLETT,
Att'y- for Petitioners.

31 *Transcript of the Trial.*

In the Court of Private Land Claims, Santa Fé, New Mexico, May Term, 1897.

GUADALUPE MONTOYA
vs.
UNITED STATES.
} No. 111. Town of Real de Dolores.

On May 17th, 1897, the above-entitled cause was called up for hearing, and the following proceedings were had therein in open court:

Appearances: Messrs. Warren, Fergusson & Bruner, for the plain-

tiff; Wm. H. Pope, Esq., assistant U. S. attorney, for the Government; Messrs. Catron, Spiess & Gortner, for No. 90; Mr. G. Hill Howard, for No. 269.

Mr. WARREN: I wish to suggest the death of the petitioner and the substitution of his only heir as petitioner.

COURT: Very well.

Mr. WARREN: I will read the amended petition filed in the case.

Mr. CATRON: I enter my appearance for Jose H. Gurule, M. S. Otero, and Francisco Trujillo, petitioners in case No. 90 of this court. I also ask leave to file an answer denying the allegations in case No. 111.

Mr. POPE: The Government files an amended answer in this case on trial.

Mr. HOWARD: I enter my appearance for the petitioners in case No. 269 in this court, and reserve the right to file an answer in this case on trial.

Mr. WARREN: We dismiss the petition as to Thomas B. Catron, the Cerrillous Coal Railroad Company, and the Santa Fe Copper Company. We except to the amended answer of the Government. This is the first time I have seen this amended answer of the Government.

COURT: You may take that course.

Mr. WARREN: We will file these exceptions in a few moments. I am ready now to file these exceptions.

COURT: Under any construction which we are able to put upon the amended petition, the claim of the plaintiffs was imperfect at the time the sovereignty and jurisdiction was acquired by the United States over this country, and it appears by the answer that
32 the Government has confirmed another grant and patented all of the lands that are included in this claim. Under this state of facts we could not confirm to the petitioner any portion of the lands, and the exceptions will be, therefore, overruled.

Mr. WARREN: The petitioners will stand upon the exceptions.

COURT: And that will result in the dismissing of the petition. This is not a question of jurisdiction at all. We think we have jurisdiction of every claim here for an alleged grant.

Mr. CATRON: We want the record to show that Mr. Warren stands upon his exceptions, and does not desire to introduce any evidence or proceed further in the case.

Mr. WARREN: That there may be no misunderstanding, we stand upon the exceptions to the answer and that the petition is dismissed.

Mr. CATRON: We ask that the order be made rejecting the claim and dismissing the petition.

Mr. WARREN: The court please, I desire to give notice of an appeal from the dismissing of the petition.

COURT: The usual practice has been just to make a written application for an appeal. The appeal is allowed.

SANTA FÉ, NEW MEXICO, *June 16th*, 1897.

I hereby certify that the above and for g-ing one (1) and a part pages contain a full, true, and correct transcript of all the proceedings had in the above-entitled cause.

W. J. McPHERSON,
Official Stenographer.

[Endorsed:] Filed in the office of the clerk court of private land claims Jun- 16, 1897. Jas. H. Reeder, clerk, by —— ——, deputy.

33 And be it further remembered that thereafter, to wit, on the 17th day of May, 1897, a motion for rehearing was filed in the office of the clerk; which said motion is in the words and figures following, to wit:

34 In the Court of Private Land Claims, Santa Fé District.

HIPOLITO MONTOYA ET AL., Heirs-at-Law of Guadalupe Montoya, and The Town of Real de Dolores del Oro
vs.
UNITED STATES OF AMERICA ET AL.
} No. 111.

Now come the petitioners, by their attorney, and move the court for a rehearing of their exceptions to paragraph fifth (5th) of the amended answer in said cause, and for cause show unto the court the following reasons, viz:

1. Said cause was heard upon the exceptions of the petitioners to the fifth paragraph or separate portion of the amended answer of the United States to the amended petition, and the court erred in carrying back the said exceptions to the amended petition herein and in determining upon the said exceptions the sufficiency of the allegations of said amended petition to establish the grant therein alleged and described of the lands therein mentioned to the said petitioners, or their predecessors in interest, as a perfect and complete grant thereof.

2. The said amended answer denies and puts in issue the allegations of said amended petition, and said p-ragraph or subdivision fifth thereof is new matter, specially pleaded as a separate defence, and the exceptions thereto of the petitioners were improperly overruled.

3. The petitioners were surprised at said hearing by the filing of said amended answer and for other sufficient reasons.

4. Upon a rehearing the petitioners can and will make good and sufficient proof and showing of the validity of said town grant alleged in said amended petition.

H. L. WARREN,
Attorney for Petitioners.

[Endorsed:] No. 111. Motion for rehearing of exceptions to answer. (Copy.)

35 And afterwards, to wit, at a stated term of the court of private land claims, begun and held at Santa Fé, on the 4th

day of May, A. D. 1897, and on the 12th day of said term, the same being the 17th day of May, 1897, the following, among other, proceedings were had, to wit:

36 In the Court of Private Land Claims, Santa Fé District.

GUADALUPE MONTOYA ET AL.
vs.
THE UNITED STATES OF AMERICA ET AL. } No. 111.

Now come the petitioners, by their attorney, and in open court suggest the death of the petitioner Guadalupe Montoya, and by leave of court the said cause is revived and continued by and in the names of Hipolito Montoya, Jose Montoya, Tircio Montoya, and Abran Montoya, the only surviving heirs-at-law of the said Guadalupe Montoya, deceased, who are, by leave of court, substituted herein as petitioners in lieu of said deceased, and the said petitioners dismiss the said cause as to the following-named defendants to the amended petition, to wit: Thomas B. Catron, The Cerrillos Coal Railroad Company, and The Santa Fe Copper Company, and the defendant The New Mexico Mining Company, by Matt. G. Reynolds, its attorney, and the defendants Joseph H. Gurule, Francisco Trujillo, and Mariano S. Otero, by T. B. Catron, their attorney, and the defendants Antonio Jose Gallegos, Francisco Francear, Jose Martin Skiner, Jesus Gonzales, Narciso Gonzales, Eustaquio Barreras, Felipe Padilla, Ascencion Nieto, Francisco Gurule, Jose Aragon, J. Catarino Garcia, Antonio Jose Gallegos, Nicolas Gutierrez, Roman Chavez, Reyes Candelario, Luis Jose Barreras, J. Vidal Mora, Eusebio Gurule, Roumaldo Nieto, Nicanor Armijo, Geronimo Gurule, Eutemio Gonzales, Pablo Barreras, Nestor Gonzales, Amado Mora, Emiterio Gutierrez, Dolores Gurule, Jose Candelario, Manuel Candelario, Benito Chavez, Jose A. Garcia y Gurule, Juan Chavez, Antonio Garcia, Pedro Anto. Serna, Juan Antonio Chavez, Jose Emiterio Montano, Simon Gonzales, Marcelino Archibeque, Nestor Nieto, Florencia Martinez, Basilio Garcia, Marrillita Gonzales, Henry Calwell, Nabor Gurule, Epifanio Calwell, Luis Chavez, John Calwell, Jose Padia, Juan Nieto, Agapito Garcia, Jose M. Serna, Tircio Lucero, J. M. Skiner, Juan Barros, R. M. Carley, Jose Gallegos, Barbara Gurule, Cirilio Montano, Manuel A. Trujillo, Juan Padilla, Pablito Chavez, and Cornelio Montoya, by George Hill Howard, their attorney, respectively come and enter their appearance herein and waive the issue and service of summons

37 and respectively waive service of a copy of the amended petition upon them and the right to plead, answer, or demur to said amended petition.

And the defendant The United States, by Matt. G. Reynolds, its attorney, by leave of court, files it- amended answer to the petition and amended petition herein, and the petitioners, by leave of court, file their exceptions to so much and such part of the said amended answer of the said defendant as is contained and set forth in paragraph, clause, or subdivision numbered fifth (5th) of said amended

answer of the said defendant upon the alleged ground of impertinence thereof.

And this cause now coming on to be heard upon the said exceptions of the petitioners to the matters set forth and contained in said paragraph, subdivision, or portion thereof numbered fifth (5th) of the said amended answer of the said defendant, and the argument of counsel being heard and the court, being sufficiently advised in the premises, doth find as conclusions of law from the facts set forth and alleged in said amended petition and in said paragraph, subdivision, or portion numbered fifth (5th) of said amended answer of the United States that the alleged grant made in the year 1830, set forth in the amended petition, of the lands described therein, was not a perfect and complete grant thereof at or prior to the date of the cession of New Mexico to the United States under and by virtue of the laws, usages, and customs of the Republic of Mexico in force at the alleged date thereof, and that the lands embraced within the said alleged grant to the petitioners lie wholly within the exterior boundaries of the tract of land described in said paragraph, subdivision, or portion numbered fifth (5th) of said amended answer, which was granted by the Republic of Mexico in the year A. D. 1833 to the grantees, Ortiz and Cano, and confirmed to the New Mexico Mining Company by the Congress of the United States of America in and by the act of Congress entitled "An act to confirm a certain land claim in the Territory of New Mexico," approved March 1st, 1861, and included within the exterior boundaries of the land embraced and described in the patent of the United States dated May 20, 1876, issued to the New Mexico Mining Company, as alleged in said fifth (5th) paragraph of
38 amended answer, and that the right to the said land having been thereby lawfully acted upon and decided by Co*b*gress and the Government of the United States having divested itself of the title to the said property by the said act of confirmation and the said patent issued in pursuance thereof, this cause cannot be maintained in this court for the confirmation of the claim of petitioners alleged in said amended petition.

It is therefore ordered that the said exceptions of the petitioners to the said paragraph, subdivision, and portion numbered fifth (5th) of the said amended answer of the United States be, and the same hereby, are overruled and denied; and the said petitioners thereupon electing to stand upon their said exceptions and in view of the said ruling declining to introduce evidence in support of said petition, it is ordered, adjudged, and decreed by the court that this cause be, and the same is, dismissed and the claim rejected.

And the said petitioners in open court pray and are hereby allowed an appeal from this judgment and decision to the Supreme Court of the United States.

39 And be it further remembered that thereafter, to wit, on the 18th day of June, 1897, an opinion was filed in the office of the clerk; which said opinion is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *ss:*

In the Court of Private Land Claims, Santa Fé District, 1897.

THE TOWN OF REAL DE DOLORES DEL ORO and GUADALUPE MONTOYA, Plaintiffs,
vs.
THE UNITED STATES OF AMERICA and THE NEW MEXICO MINING COMPANY, Defendants. } No. 111.

Opinion of the Court.

REED, *C. J.:*

In passing upon plaintiffs' exceptions to the answer of the Government we hold—

First, That plaintiffs' petition alleges but an equitable claim—that is, the title pleaded is not shown to have been complete and perfect at the time the Government of the United States acquired jurisdiction of this Territory;

And, se-nd, that the Government having divested itself of the title to the property by the act of confirmation and the patent issued in pursuance thereof, an action cannot be maintained in this court for the confirmation of plaintiffs' claim.

40 UNITED STATES OF AMERICA,
Territory of New Mexico.

I, James H. Reeder, clerk of the court of private land claims, do hereby certify that the foregoing is a full, true, and correct transcript of all the papers filed and proceedings had in said court in the case entitled The Town of Real de Dolores del Oro and Guadalupe Montoya against The United States of America and The New Mexico Mining Company, as the same remain of record and on file in my office.

Witness my hand and the seal of the said court, at my office in Santa Fé, New Mexico, this 17th day of June, A. D. 1897.

[Seal Court of Private Land Claims, Santa Fé, New Mexico.]

JAMES H. REEDER, *Clerk,*
By IRENEO L. CHAVES, *Deputy.*

Endorsed on cover: Case No. 16,624. Court of private land claims. Term No., 132. The Town of Real de Dolores del Oro, Hipolito Montoya, *et al.*, appellants, *vs.* The United States *et al.* Filed July 10th, 1897.

No. 1393, 17.

Brief of Warren

Filed Dec. 22, 1898.

Supreme Court U. S.
FILED
DEC 22 1898
Clerk.

No. 132.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1898.

THE TOWN OF REAL DE DOLORES DEL ORO, HIPOLITO MONTOYA, ET AL.,
Appellants.

vs.

THE UNITED STATES, ET AL.,
Appellees.

Appeal from the Court of Private Land Claims.

BRIEF OF APPELLANTS.

H. L. WARREN,
Attorney for petitioners.

No. 132.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1898.

THE TOWN OF REAL DE DOLORES DEL ORO, HIPOLITO MONTOYA, ET AL.
Appellants.

vs.

THE UNITED STATES, ET AL.
Appellees.

Appeal from the Court of Private Land Claims.

BRIEF OF APPELLANTS.

STATEMENT OF THE CASE.

This is an appeal by petitioners below from the judgment of the Court of Private Land Claims established by the Act of March 3, 1891, (U. S. Rev. Stats.; Supp. p. 920, Sec. 9) rejecting their petition for confirmation of the town grant from Mexico in question.

The amended petition filed in that Court on April 2, 1897, (Rec. pp. 7-10) in substance alleges that in the year 1830, the town oi Real de Dolores del Oro, in New Mexico, was duly organized under, and in pursuance of the then existing laws of the Republic of Mexico, and continued in existance from the time of its foundation, with the officers, powers, and jurisdiction pertaining to uch town, until the cession of said Territory to the United States; and at that time all of the requirements of the laws of Mexico had been complied with, and said town had become legally entitled to the tract of land containing four square leagues described as having the church situated in said town as the center of said tract; and that it is believed that a grant of said tract had been actually made by the Mexican government, although no original documents are known to exist evidencing the same.

The amended answer of the United States in substance denies the allegations of the amended petition, both of law and fact, and the fifth subdivision or paragraph (pp. 11-12) is as follows:

"Fifth. Defendant further answering, says that, even if said grant as alleged was made as set forth in said petition, the land claimed in said petition under and by virtue of said alleged grant was and is entirely

within the limits of a tract of land known as the Ortiz Mine Grant, which, by virtue of the laws, usages and customs, and mining ordinances of Mexico, was on the 18th day of December, 1833, made to Jose Francisco Ortiz and Ignacio Cano. The claim for which said land so granted, consisting of sixteen square leagues of land, being two leagues in each of the four cardinal directions from the Santa Rosalia mine, was presented by the successors in interest of said grantees to the surveyor general of New Mexico, under the provisions of the eighth section of the Act of Congress of June 27, 1854, for his approval, and that such proceedings were had before said surveyor general, that afterwards, to-wit, November 24, 1860, said surveyor general of New Mexico approved the said claim and transmitted the same to Congress and recommended its confirmation; and that afterwards, to-wit, under and by virtue of the Act of Congress approved March 1st, A. D. 1861, entitled 'An Act to confirm a certain private land claim in the Territory of New Mexico,' said Congress of the United States confirmed said claim as recommended for confirmation; which said act is in words and figures as follows, to-wit:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the private land claim in the Territory of New Mexico, as recommended for confirmation by the surveyor general of that Territory, and in his report to the commissioner of the general land office, of November twenty-fourth, Eighteen Hundred and Sixty, designated as number forty-three, be, and the same is hereby, confirmed; Pro-

vided, that the foregoing confirmation shall only be construed as quit-claim or relinguishment, on the part of the United States, and shall not effect the adverse rights of any other person or persons whomsoever.

"That under and by virtue of said act of confirmation a survey of said grant so recommended for confirmation and so confirmed was duly made by the public authorities lawfully constituted therefor, and on the 20th day of May, A. D. 1876, letters patent for said confirmed grant duly issued to the New Mexico Mining company as the owners of said Ortiz Mine grant.

"Defendant shows that by virtue of said act of confirmation and said letters patent, the said New Mexico Mining Company acquired the interest of the United States in and to said sixteen square leagues of land, including the grant herein claimed as aforesaid, and that by said Act of Congress the right to said land was vested in said New Mexico Mining Company, and said action of Congress was and is conclusive and binding upon this Court, for the reason that by the act establishing this Court it is specifically provided that no claim shall be allowed for any land the right of which has been hitherto lawfully acted upon and decided by Congress or under its authority.

"Defendant sows that by virtue of said act of confirmation, as aforesaid, passed any title acquired by the United States under the treaty of Guadalupe Hidalgo, and that the United States has no interest in said property, and none which this Court could pass to plaintiff herein, and that said claim is not one

which, under the treaty of Guadalupe Hidalgo, the laws of nations, and the acts of Congress, is entitled to be confirmed by this Court."

The petitioners excepted to the sufficiency of the matter pleaded in said fifth paragraph as a defence to their petition (record, p. 14); and their exceptions were overruled by the Court, and their motion for a re-hearing was denied; (record p. 18) and thereupon the petitioners electing to stand upon their exceptions to said fifth paragraph, the petition was dismissed, and the claim was rejected (record, pp. 16-19); and the petitioners appealed. (Record p. 18.)

SPECIFICATION OF ERRORS.

The Court erred in overruling petitioner's exceptions to the fifth paragraph of the answer; and in holding:—

"First. That plaintiff's petition alleges but an equitable claim—that is, the title pleaded is not shown to have been complete and perfect at the time the government of the Unitd States acquired jurisdicion of this Territory;

"And, second; That the government having divested itself of the title to the property by the Act of confirmation and the patent issued in pursuance thereof, an action cannot be maintained in this Court for the confirmation of plaintiffs' claim." (Record, p. 19.)

ARGUMENT, POINTS AND AUTHORITIES.

1. In addition to the allegations of the amended petition that the town, village, or pueblo called the Real de Dolores del Oro had been duly established in A. D. 1830, and officially recognized under the Republic of Mexico; and that all requirements of law had been complied with; and that said town, "in default of an actual grant of a larger quantity was entitled by law to a tract, including the lands held in severalty, of four square leagues of land in a square form, with the church or the center of the town as the center of the tract" (par. 3, p. 8, record); it is stated that "there is no known direct evidence or record of the grant to said town, although there is reason to believe that a grant was actually made" (Par. 4, p. 8); and that "said land is situated in the county of Santa Fe, New Mexico, and includes four square leagues, having the center of the said town, being the church situated therein, as the center thereof," (Par. 7); and "said tract of land is held and claimed by a large number of persons, including your petitioner, under the said grant." (Par. 8).

It is submitted that under the amended petition the claimants would have been authorized to prove upon trial, title to the tract described, by grant from Mexico which was complete and perfect, or if

not, one which they could "by right and not by grace, have demanded that it should be made perfect by the former government, had the territory not been acquired by the United States;" and which grant it would have been the duty of the court of private land claims to confirm.

Act to establish a court of private land claims; approved March 3, 1891, Supp. Rev. Stat. Sec. 13, p. 922.

Ainsa vs. U. S., 161 U. S. 208-222.

U. S. vs. Santa Fe, 165, U. S. 675-714.

U. S. vs. Sandoval, 167, U. S. 278.

The amended petition was not demurred to; and the Court erred in holding, of its own motion, that only an equitable claim is alleged or could have been proven under the pleadings

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2. The Court below erred in holding that the petitioners could not maintain their action, for the reason stated.

The Act of Congress approved March 1, 1861, confirming the Ortiz mine grant, and the patent issued thereunder to the New Mexico Mining Company, which included the grant claimed by these petitioners, pleaded in Par. 5, of the answer, did not prevent

these claimants from maintaining their action, and from recovery of judgment therein against the United States, upon sufficient proofs.

Express provision is made for such proceeding and money judgment by Sec. 14, of the Act of March 3, 1891, supra; and the court of private land claims is vested with jurisdiction for that purpose.

H. L. WARREN,
Attorney for petitioners.

In the Supreme Court of the United States.

OCTOBER TERM, 1898.

THE TOWN OF REAL DE DOLORES del Oro, Hipolito Montoya, et al., appellants,
v.
THE UNITED STATES ET AL. } No. 132.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

BRIEF ON BEHALF OF THE UNITED STATES.

STATEMENT.

On February 18, 1893, a petition was filed in the Court of Private Land Claims, alleged to be by the town of Real de Dolores del Oro, unincorporated, organized "in pursuance of the Republic of Mexico," and situate in the county of Santa Fe and Territory of New Mexico, and Guadalupe Montoya, against the United States of America and the New Mexico Mining Company as defendants, alleging substantially as follows (R., 1–3):

1. That in the year 1830 the then governor of New Mexico, under the government of the Republic of Mexico,

founded the town or village called Real de Dolores del Oro, according to the laws of Mexico then in force in said Territory.

2. That the said town or village continued in existence from the time of its foundation down to the cession of said territory to the United States, with the officers, power, and jurisdiction pertaining to a town or village under the Mexican Government, and prior to said date there were not less than forty residents of said town, including not less than twenty householders and heads of families, and a church had been erected and maintained in said town, and all of the requirements of the laws of the Republic of Mexico in relation thereto had been complied with, and the said town or village had been and was fully recognized by public authority, and was in existence as such at the date of said cession.

3. That by virtue of its creation and existence said town, in addition to what was allotted to its inhabitants in severalty, became and was entitled under the laws of Mexico to lands for the common use of the town and for late settlers who might lawfully take up their residence thereon, and in default of an actual grant of a larger quantity, was entitled by law to a tract, including the lands held in severalty, of four square leagues of land in a square form, with the church or the center of the town as the center of the tract, and extending therefrom one league to each of the cardinal points of the compass.

4. That there is no known direct evidence or record of the grant to said town, although there is reason to believe that a grant was actually made.

5. That the said town was not incorporated, but the petitioner, Guadalupe Montoya, brought the petition on behalf of said town and of himself, and of all other owners of land within the boundaries of said tract, there being no municipal corporation within the limits of the said tract; that the said Guadalupe Montoya is the owner, by descent and purchase, of a part of the said tract of land embraced in the grant thereof to the said town, and is the successor in part to the rights and title of said original grantee.

6. That shortly after the acquisition of New Mexico by the United States the Real de Dolores del Oro ceased to exercise the powers and functions of a municipal government and ceased to elect the municipal officers who previously had administered its affairs.

7. That said land is all situated in the county of Santa Fe, N. Mex., and includes 4 square leagues, having the center of the said town, being the church situated therein, as the center thereof, and a map of the same was filed with the petition.

8. That the said tract of land is held and claimed by a large number of persons, including the petitioners, under the said grant, and it is not known that any of the possessors or claimants thereof are adverse to the petitioners, but they are informed that the New Mexico Mining Company claims some title or interest therein under and by virtue of an alleged private land grant, which, the petitioners allege, is subordinate to their title.

9. That, so far as is known to the petitioners, no claim for the said tract has ever been submitted to the authorities constituted by law for the determination of land

titles in the Territory of New Mexico, and no survey of the said tract has ever been made.

10. That no original documents constituting or creating the grant claimed are known to exist.

The eleventh paragraph of the petition states the claim of the petitioners to the said tract of land for 4 square leagues, as shown on the map they file, having for its center the center of the old Real de Dolores del Oro, being the church situated therein, and prays that the validity of the grant may be inquired into and decided by the court and the said grant confirmed to the said town or to the petitioner Guadalupe Montoya, in his own right and in trust for the benefit of the other owners of lands within its limits.

On April 16, 1895, an answer, in the nature of a general denial, was filed on behalf of the United States (R., 5).

On September 5, 1896, a motion requiring the petitioners to bring before the court as parties defendant certain adverse possessors and claimants to portions of the lands claimed under what was known as the San Antonio de las Huertas grant, then pending before the Court of Private Land Claims as cases Nos. 90 and 209, was filed by the United States (R., 6), and the order of the court was made accordingly (R., 6).

Thereafter, on April 2, 1897, thirty days after the announcement of the decision of this court in the case of the *United States* v. *The City of Santa Fe* (165 U. S., 675), the petitioners filed an amended petition (R., 7–10). It will be noted that each paragraph of this amended petition is identical with the paragraph numbered correspond-

ingly in the original petition, commencing with the first paragraph and including the eleventh, with the exception that in paragraph 8 thereof there is included the names of various adverse possessors and claimants required to be made parties to the suit by the order of the court of September 5, 1896 (R., 6). Not a single allegation or issue in the original petition was changed by the amended petition, although an additional paragraph, praying for the issue of process against the defendants, was added.

On May 17, 1897, the United States filed an amended answer (R., 10–13) to this amended petition, which, after traversing the petitioners' allegations as to the origin, existence, and right of the town, by virtue of its creation and existence, to the grant claimed, denied generally all the other allegations of the petition.

The answer further alleged that, even if said grant was made as claimed, the land claimed was and is entirely within the limits of a tract of land known as the Ortiz Mine grant, which, by virtue of the laws, usages, and customs, and mining ordinances of Mexico, was, on the 28th day of December, 1833, made to Jose Francisco Ortiz and Ignacio Cano; that the claim for which said land, so granted, consisting of sixteen square leagues of land, being two leagues in each of the four cardinal directions from the Santa Rosalia Mine, was presented by the successors in interest of said grantee to the surveyor-general of New Mexico, under the provisions of the eighth section of the act of Congress of June 27, 1854, for his approval, and that such proceedings were had before said surveyor-general; that afterwards, to wit, on November

24, 1860, said surveyor-general of New Mexico approved the said claim and transmitted the same to Congress, and recommended its confirmation, and that afterwards, to wit, under and by virtue of an act of Congress, approved March 1, 1861, entitled "An act to confirm a certain private land claim in the Territory of New Mexico," said Congress of the United States confirmed said claim as recommended for confirmation. That by virtue of such confirmation and letters of patent issued thereunder, the confirmee thereof acquired the interest of the United States in and to such land, including the land claimed by the petitioners, and that said action of Congress was and is conclusive and binding upon this court, according to the provisions of the act of Congress creating it; that therefore the United States has no interest in said property, and that said claim is not one which, under the Treaty of Guadalupe Hidalgo, the laws of nations, and the acts of Congress, is entitled to confirmation by this court.

Further answering, the United States said that even if any such grant was made as set forth in the petition, the land thereby attempted to be confirmed was, to the extent of about 2,000 acres, within the limits of a tract of land known as the Mesita to Juana Lopez grant, which was granted by the Spanish Government, on the 18th day of January, A. D. 1782, to Domingo Romero, Miguel Ortiz, and Manuel Ortiz, a claim for which said tract of land was presented by the heirs of said grantees to the surveyor-general of the Territory of New Mexico, and that such proceedings were had before said surveyor-general that afterwards, to wit, on November 29, 1872,

said surveyor-general approved said claim and transmitted the same to Congress, recommending its confirmation, and that afterwards, to wit, on January 29, 1879, said Congress confirmed said claim to the descendants of said original grantees. That therefore, for the same reasons stated in reference to the confirmed Ortiz Mine grant, the grant claimed by the petitioners, to the extent of said conflict with said Mosita de Juana Lopez grant, is not one which was entitled to confirmation by the court.

On the same day the petitioners filed their exceptions to this amended answer of the Government (R., 14), excepting to such part thereof as set forth that the land described in the petitioners' amended petition is within the limits of the tract of land known as the Ortiz Mine grant, confirmed by Congress and patented to the confirmees by the United States, and that by virtue of such confirmation and patent the right to said land was vested in the confirmees as against the petitioners, and that said action of Congress is conclusive and binding upon the court for the reasons set forth in said answer; and for grounds of their exceptions the petitioners stated that the said amended answer does not allege that the right of the petitioners to said land described in their amended petition has ever been lawfully acted upon or decided by Congress or under its authority, and that said amended answer in said matters so set forth is insufficient in law to constitute any defense to said petition.

It will be seen from the transcript of the trial (R., 15) that the foregoing exceptions to the answer of the Government were overruled by the court after the appearance of the additional defendants, claimants under the

Las Huertas grant (R., 14, 15). The court said in so doing:

> The COURT. Under any construction which we are able to put upon the amended petition, the claim of the plaintiffs was imperfect at the time the sovereignty and jurisdiction was acquired by tne United States over this country, and it appears by the answer that the Government has confirmed another grant and patented all of the lands that are included in this claim. Under this state of facts we could not confirm to the petitioner any portion of the lands, and the exceptions will be, therefore, overruled.
>
> Mr. WARREN. The petitioners will stand upon the exceptions.
>
> The COURT. And that will result in the dismissing of the petition. This is not a question of jurisdiction at all. We think we have jurisdiction of every claim here for an alleged grant.
>
> Mr. CATRON. We want the record to show that Mr. Warren stands upon his exceptions, and does not desire to introduce any evidence or proceed further in the case.
>
> Mr. WARREN. That there may be no misunderstanding, we stand upon the exceptions to the answer, and that the petition is dismissed.

It thus appears that counsel for claimants declined to introduce any evidence to sustain the allegations of the amended petition, and the Court of Private Land Claims, whatever opinion it may have entertained as to the truth of the allegations of the amended petition, was compelled to dismiss the same for want of any evidence in support thereof. This was done and the case appealed to this court.

At this point it is proper to state that it has been and is the unvaried practice of the Court of Private Land

Claims, and so announced at the beginning of the litigation before it, that demurrers and dilatory pleas would not be passed upon by it, but that such pleas could be made use of by way of answer or replication, for, as the court was limited in life, it became necessary that the entire case should be tried, all issues made up without decision, and then decided, thus disposing of at one time all questions arising under the pleading and testimony. The reason for this was obvious, for, if an issue were joined and decided on, a technical question of pleading, and an appeal taken to this court, which should hold the Court of Private Land Claims in error in sustaining such a plea and remand the case, the entire case would have to be tried, and possibly would not be returned to the Court of Private Land Claims before its legal demise, as the act creating it limited its life, and thus the claimant would be deprived of an opportunity of having his title fully heard. The adoption of this rule displayed at least a desire on the part of the Court of Private Land Claims to give claimants an opportunity to complete their records as to all issues of law and fact, thus avoiding a future contingency of the lapse of the court.

ARGUMENT.

I.

The Court of Private Land Claims was compelled to dismiss the claimants' petition, when they declined to introduce any evidence in support thereof.

> The court shall proceed to hear the cause on the petition and proofs, and render a final decree according to the provisions of this act, and in no case shall

> a decree be entered otherwise than upon full legal proof and hearing; and in every case the court shall require the petition to be sustained by satisfactory proofs, whether an answer or plea shall have been filed or not.
>
> Section 6, paragraph third, act 1891 (26 Stats. Large, 854).

The Court of Private Land Claims did not, in the record or in any statement *de hors* the record, say or hold that the plaintiffs would be precluded from introducing any evidence tending to support their claim or establish their alleged rights to the land or any part thereof, either under a perfect or imperfect grant, nor did it hold or suggest, as counsel gratuitously assumed in his brief (page 7), "that only an equitable claim is alleged or could have been proven under the pleadings." The court did say that on the face of the petition the claim was an imperfect one, and that the exceptions to the answer of the Government were not well-founded, because, as the case then stood on the pleadings, the prior disposition of the land by Congress, under the confirmation to the New Mexico Mining Company of the Ortiz grant, had passed to the New Mexico Mining Company the legal title to the property, and therefore the United States could not confirm and transfer the title to the same land to the claimants, for it had already disposed of the same; therefore, the answer of the Government was responsive to the allegations of the petition.

In no manner and at no time did the court say or intimate that the claimants would be limited in their evidence to proof of an imperfect or perfect grant if they

could do so. Such a statement as counsel makes is entirely voluntary.

The proper course of claimants, after excepting to the court's decision overruling their exceptions, was to have gone to trial and introduced their testimony, instead of haughtily declining to do so, and then the court could have passed upon the whole case, both as to questions of law and fact. Were the claimants still unsatisfied they had their remedy of appeal.

II.

It is believed by counsel for the Government that claimants declined to introduce any evidence because of the decision of this court in what is known as the Santa Fe Case, and relied upon his dilatory motion, in pursuance of a desire to keep the title to the claim *sub judice*, not only as to the United States, but as to the New Mexico Mining Company.

When the Court of Private Land Claims intimated that the pleadings disclosed an imperfect claim, it is insisted, in view of the decision of this court in the *Santa Fe Case* (165 U. S., 675), that it gave to the allegations in the petition a more liberal and charitable construction than they were entitled to, for, the petition and amended petition in the Santa Fe Case and the petition and amended petition in this case were all drafted upon the same theory, and the allegation in each of the same is, in almost identical language, that by virtue of the establishment and official recognition of the town or villa it became entitled by operation of law to four square leagues

of land, with the center of the town or villa as the center of the grant.

Without discussing the fallacy of the theory upon which these cases were presented to the Court of Private Land Claims, this court has settled every question presented by the petition in this case against the jurisdiction of the Court of Private Land Claims over the same.

> Although the act of 1891, in section 11, authorized a town presenting a claim for a grant to represent the claims of lot holders to lots within the town, this provision does not override the general requirements of the statute as to the nature of the claim to title which the court is authorized to confirm. The difference between the act of 1891 and the California act of 1851, hitherto referred to, accentuates the intention of Congress to confine the authority conferred by the later act to narrower limits than those fixed by the act of 1851. The act of 1851 authorized the adjudication of claims to land by virtue of any "right" or "title" derived from the Spanish Government, and conferred the power in express language on the board and court to presume a grant in favor of a town. The act of 1891 not only entirely omits authority to invoke this presumption, but, as we have seen, excludes by express terms any claim the completion of which depended upon the mere grace or favor of the Government of Spain or Mexico, and of the United States as the successor to the rights of those Governments. (*U. S.* v. *Santa Fe*, 165 U. S., 675.)

If, however, claimants could possibly bring their claim within any character of a grant authorized by the act of 1891 to be confirmed, they were in no way precluded from

doing so, although, on the face of their petition, as in the Santa Fe case, no such claim is alleged as would give the court jurisdiction. But no doubt realizing that the alleged establishment of the town of Real de Dolores del Oro, as late as 1830, within 30 miles of the capital of New Mexico and only about three years prior to the grant of the Ortiz Mine to Ortiz and Cano, would be the subject of thorough investigation by means of records and the testimony of witnesses still living, they declined to attempt to sustain the allegations of their petition, because, forsooth, it was impossible.

III.

Some stress seems to be laid by counsel in his brief on the fact that his petition and amended petition contained the allegation that

> There is no known direct evidence or record of the grant to said town, although there is reason to believe that a grant was actually made.
> Original petition, paragraph 4 (R., 2).
> Amended petition, paragraph 4 (R., 8).

A similiar allegation was contained in the original petition in the Santa Fe Case, although it was modified by the qualified averment that "all the muniments of title of such municipal grant, if any such existed, were utterly destroyed by the hostile Indians engaged in such insurrection." It will be noted that the allegations in the case at bar, as to the existence of an express grant, are purely inferential, and in neither of these cases was it believed or expected that even an attempt would have to be made to prove an express grant to any quantity of

land, but they were instituted and tried upon the presumptive idea of a grant of four square leagues by operation of law.

The facts concerning the alleged creation, settlement, occupation, and recognition of this town in 1830 should have been established by the claimant, if such a thing were possible, in a consistent endeavor to sustain the allegations of his petition. If any allotments under the town, either by virtue of direct grant by the city or under its authority, or any occupation thereunder, either by the 40 settlers or 20 heads of families, could have been proven, the allegations thereof should not be based on the imagination of the pleader who drafted the petition.

The real petitioner in this case, Guadalupe Montoya, seeks to have the entire grant or claim confirmed to him "in trust for the benefit of all owners of land within its limits." The presumption of Montoya, under the peculiar circumstances disclosed by the record, in seeking to substitute himself as voluntary trustee for others who are as capable of suing as he is, is only equaled by his temerity in appealing the case to this court upon a record showing that he declined to even undertake to sustain the allegations of his petition, or attempt to establish an imperfect grant or even an inchoate right.

Counsel suggests in his brief (p. 7) that "the amended petition was not demurred to."

As stated before, it has been the practice of the Government's counsel, in view of his early experience with the court in relation to demurrers and technical dilatory pleas, to raise all questions of law and fact by way of answer, in accordance with the court's intimation that

this course would better expedite the litigation within the life of the court. But the failure to demur to the original or amended petition in no wise amounts to an acknowledgment that the allegations thereof are sufficient to give the court jurisdiction of the subject-matter. It was the duty of claimant's counsel, if he desired to have such a judgment entered as he might show his client entitled to under the evidence, to have proceeded with his case, introduced his evidence, and made up his record; then, perhaps, he might have amended his petition to conform to his proof, if he had any, as to the origin, occupation, and recognition of the town, or of allotments of lands thereunder, in 1830 or at any other time.

V.

Counsel states in his brief (p. 7):

> The court below erred in holding that the petitioners could not maintain their action, for the reason stated.
>
> The act of Congress, approved March 1, 1861, confirming the Ortiz Mine grant, and the patent issued thereunder to the New Mexico Mining Company, which included the grant claimed by these petitioners, pleaded in paragraph 5 of the answer, did not prevent these claimants from maintaining their action, and from recovery of judgment therein against the United States, upon sufficient proofs.

As frequently stated, the court did not decline to permit the claimants to attempt to sustain their title or maintain their action, but, on the contrary, it held that on the face of the pleadings the grant was an imperfect one, which, under the Santa Fe decision, was only

an inchoate right, if any at all, and one which could not be recognized under the act creating the Court of Private Land Claims. It did hold, however, that if he sustained the allegations of his petition as to an imperfect title, the land had been disposed of by the United States to others when it held the legal title, and therefore the claim did not come within the purview of a decree of the court for the reason that the confirmation sought could vest nothing.

It is complained that an express provision is made for such proceeding and money judgment by section 14 of the act of March 3, 1891, and that the Court of Private Land Claims is vested with jurisdiction for that purpose. The Court of Private Land Claims is, beyond doubt, vested with jurisdiction for that purpose, and it has never declined to exercise it in any case coming within the provisions of this section and upon allegations in the petition seeking to obtain such money judgment in the event that the Government had wrongfully disposed of any of the lands.

This question, however, has been fully considered in the Government's brief in case No. 86, *U. S.* v. *Conway*, which is to be argued with this case.

Had the Court of Private Land Claims held the title in this case to have been an imperfect one, which, however, would not have been in accord with the decision of this court in the Santa Fe case, it was not empowered to give to the town of Dolores a confirmation for 4 square leagues, for, under the various decisions of this court, the prior confirmation by Congress was the valid

title to the land, although the claim upon which such confirmation had been based was junior in time and in right to that of the present claimant.

For all these reasons, it is confidently submitted that the judgment of the Court of Private Land Claims should be affirmed.

Respectfully submitted.

JOHN K. RICHARDS,
Solicitor-General.

MATTHEW G. REYNOLDS,
Special Assistant to the Attorney-General.

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REAL DE DOLORES DEL ORO *v.* UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

No. 17. Argued and submitted January 12, 1899. — Decided November 30, 1899.

A claim in the Court of Private Land Claims for land within the limits of a mine grant, which grant has been confirmed by Congress and a patent issued therefor, must be rejected by that court.

Section 14 of the act of March 3, 1891, c. 539, 26 Stat. 854, 861, establishing that court, which provides for a personal judgment against the United States in cases where the land decreed to any claimant, under the provisions of the act, shall have been sold or granted by the United States, applies only to cases where such lands have been sold or granted as public lands, for a consideration which equitably belongs to the owner of the land, and not to cases where the Government has merely released its

Statement of the Case.

interest to one apparently holding a good title under a Spanish or Mexican grant, which subsequently turns out to be inval'd by reason of an older or better title.

THIS was a petition filed by the town of Real de Dolores del Oro and Guadalupe Montoya against the United States, the New Mexico Mining Company, and a large number of other defendants, for the confirmation of a tract of land containing four square leagues, having for its centre the centre of the old Real de Dolores del Oro — being the church situated therein — with a prayer that the tract may be confirmed to the town, or to the petitioner Montoya in his own right, and in trust for the benefit of the other owners of lands within its limits.

The petition set forth in substance that, in the year 1830, the governor of New Mexico founded the town of Real de Dolores del Oro according to the laws of New Mexico; that such town continued its existence from that time to the cession of said territory to the United States, having not less than forty residents, including not less than twenty householders and heads of families; that a church had been erected and maintained, and all of the requirements of the laws of the Republic of Mexico had been observed, and that the town had been fully recognized by public authority; that by virtue of such laws the town, in addition to the several allotments to its inhabitants, became and was entitled under the laws of Mexico to lands for the common use of the town, and in default of a grant for a larger quantity was entitled by law to a tract, including the lands held in severalty, of four square leagues from the centre of the town, namely, the church; that there was no direct evidence or record of such grant to the town; that the town was not incorporated, but that the petitioner Montoya brought the petition on behalf of the town and himself, and of all other owners of land within the boundaries of the tract, and as the successors in part to the rights and title of the original grantee; that shortly after the acquisition of New Mexico by the United States the town ceased to exercise the powers and functions of a municipal government, or to elect municipal officers; that the tract is

now held and claimed by a large number of persons under such grant, and it is not known that any of the possessors or claimants thereof are adverse to the petitioners, though they are informed that the New Mexico Mining Company claims some title or interest therein by virtue of a private land grant, which is subordinate to their title; that no claim for such tract has ever been submitted to the authorities, and no survey of the tract has ever been made.

Subsequently an order was made by the court requiring petitioners to bring before the court, as parties defendant, certain adverse possessors and claimants to portions of the land claimed under what was known as the San Antonio de las Huertas grant, then pending before the court.

The United States answered this petition, traversing the petitioners' allegations as to the origin, existence and right of the town to the grant claimed, and denied generally all the other allegations. The answer further averred that, even if such grant had been made as set forth in the petition, the land claimed thereunder was entirely within the limits of a tract of land known as the Ortiz Mine grant, which, by virtue of the laws, usages and customs, and mining ordinances of Mexico, was on the 28th of December, 1833, made to José Francisco Ortiz and Ignacio Caño; that the claim for such land was presented by the successors in interest of the original grantees, to the surveyor general of New Mexico, under the provisions of the act of Congress of July 22, 1854, for his approval. That the surveyor general subsequently approved the claim; transmitted the same to Congress, recommended its confirmation; and that afterwards Congress, by act approved March 1, 1861, confirmed said claim. That subsequently a survey was made by the public authorities, and on May 20, 1876, letters patent for such confirmed grant were duly issued to the New Mexico Mining Company as owner thereof. That such patent included the lands claimed in the petition, and that the action of Congress was and is conclusive and binding upon this court.

To the allegation of the answer setting up the Ortiz Mine grant, the petitioners excepted upon the ground that the

answer did not allege that the right of the petitioners to said land described in their amended petition had ever been lawfully acted upon or decided by Congress, or under its authority, and that said matter in said amended answer was insufficient in law to constitute a defence.

These exceptions were overruled by the court upon the ground that the claims of the petitioners were imperfect at the time the sovereignty and jurisdiction were acquired by the United States, and that it appeared by the answer that the Government had confirmed another grant and patented all the lands included in petitioners' claim.

The petitioners elected to stand upon the exceptions and introduced no evidence; and a decree was thereupon entered to the effect that petitioners' grant "was not a perfect and complete grant thereof at or prior to the date of the cession of New Mexico to the United States under and by virtue of the laws, usages and customs of the Republic of Mexico, in force at the alleged date thereof, and that the lands embraced within the said alleged grant to the petitioners lie wholly within the exterior boundaries" of the Ortiz mining grant; . . . "and that the right to the said land having been thereby lawfully acted upon and decided by Congress, and the Government of the United States having divested itself of the title to said property by the said act of confirmation, and the said patent issued in pursuance thereof, this cause cannot be maintained in this court for the confirmation of the claim of petitioners, alleged in said amended petition." Whereupon petitioners appealed to this court.

Mr. H. L. Warren, for appellants, submitted on his brief.

Mr. Matthew G. Reynolds for the United States. *Mr. Solicitor General* was on his brief.

Mr. Justice Brown, after stating the case as above, delivered the opinion of the court.

As it appears in this case that these lands were within the limits of the Ortiz Mine grant — which had been confirmed

by Congress, and a patent therefor issued to the principal defendant — it follows, without adverting to other defences, that under the opinion in *United States* v. *Conway*, just decided, the claim was properly rejected.

Nor can the petition be sustained for an indemnity under section fourteen of the Private Land Claim act, as no such claim is made by the petition. We are also of opinion that section 14 of the act of March 3, 1891, c. 539, 26 Stat. 854, (printed in full in margin,[1]) which provides for a personal judgment against the United States in cases where the land decreed to any claimant, under the provisions of the act, shall have been sold or granted by the United States, applies only to cases where such lands have been sold or granted as public lands, for a consideration which equitably belongs to the owner of the land, and not to cases where the Government has merely released its interest to one apparently holding a good title under a Spanish or Mexican grant, which subsequently turns out to be invalid by reason of an older or better title. In the one case there is a moral obligation on the part of the Government to protect the real owner. In the other, there is a mere quitclaim of its rights to one who apparently has a better title thereto. There is no warranty, direct or indirect, that the title is a valid one, and no reason why the Government should be called upon to protect it. This was the ruling of the Court

[1] SEC. 14. That if in any case it shall appear that the lands or any part thereof decreed to any claimant under the provisions of this act *shall have been sold or granted by the United States to any other person*, such title from the United States to such other person shall remain valid notwithstanding such decree, and upon proof being made to the satisfaction of said court of such sale or grant and the value of the lands so sold or granted, such court shall render judgment in favor of such claimant against the United States for the reasonable value of said lands so sold or granted, exclusive of betterments, not exceeding one dollar and twenty-five cents per acre for such lands; and such judgment, when found, shall be a charge on the Treasury of the United States. Either party deeming himself aggrieved by such judgment may appeal in the same manner as provided herein in cases of confirmation of a Spanish or Mexican grant. For the purpose of ascertaining the value and amount of such lands surveys may be ordered by the court, and proof taken before the court, or by a commissioner appointed for that purpose by the court.

of Private Land Claims in a prior case, and we think it is correct.

The decree of the court below is therefore

Affirmed.

MR. JUSTICE SHIRAS and MR. JUSTICE WHITE dissented.